

Thomas Jefferson, December 3, 1792, Fugitive Slaves, with Copy , from The Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.

OPINION ON FUGITIVE SLAVES J. MSS.

December 3, 1792.

Opinion relative to a case of recapture, by citizens of the United States, of slaves escaped into Florida, and of an American enticing French slaves from St. Domingo.

Complaint has been made by the Representatives of Spain that certain individuals of Georgia entered the State of Florida, and without any application to the Government, seized and carried into Georgia, certain persons, whom they claim to be their slaves. This aggression was thought the more of, as there exists a convention between that government and the United States against receiving fugitive slaves.

The minister of France has complained that the master of an American vessel, while lying within a harbor of St. Domingo, having enticed some negroes on board his vessel, under pretext of employment, brought them off, and sold them in Georgia as slaves.

1. Has the general government cognizance of these offences? 2. If it has, is any law already provided for trying and punishing them?

1. The Constitution says "Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts &c., provide for the common defence and *general welfare* of the United States." I do not consider this clause as reaching the point. I suppose its meaning to be, that Congress may collect taxes for the purpose of providing for the

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general welfare, in those cases wherein the Constitution empowers them to act for the general welfare. To suppose that it was meant to give them a distinct substantive power, to do *any act* which might tend to the *general welfare*, is to render all the enumerations useless, and to make their powers unlimited. We must seek the power therefore in some other clause of the Constitution. It says further, that Congress shall have power to “define and punish

piracies and felonies committed on the high seas, and offences against the law of nations.” These offences were not committed on the high seas, and consequently not within that branch of the clause. Are they against the law of nations, taken as it may be in its whole extent, as founded, 1st, by nature; 2d, usage; 3d, convention. So much may be said in the affirmative, that the legislators ought to send the case before the judiciary for discussion; and the rather, when it is considered that unless the offenders can be punished under this clause, there is no other which goes directly to their case, and consequently our peace with foreign nations will be constantly at the discretion of individuals.

2. Have the legislators sent this question before the Courts by any law already provided? The act of 1789, chapter 20, section 9, says the district courts shall have cognizance concurrent with the courts of the several States, or the circuit courts, of all causes, where an *alien sues for a tort only*, in violation of the law of nations; but what if there be no alien whose interest is such as to support an action for the tort?—which is precisely the case of the aggression on Florida. If the act in describing the jurisdiction of the Courts, had given them cognizance of proceedings by way of indictment or information against offenders under the law of nations, for the public wrong, and on the public behalf, as well as to an individual for the special tort, it would have

been the thing desired.

The same act, section 13, says, the “Supreme Court shall have exclusively all such jurisdiction of suits or proceedings against ambassadors, or other public ministers, or their

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domestics or domestic servants, as a court of law can have or exercise consistently, with the law of nations.”—Still this is not the case, no ambassador, &c., being concerned here. I find nothing else in the law applicable to this question, and therefore presume the case is still to be provided for, and that this may be done by enlarging the jurisdiction of the courts, so that they may sustain indictments and informations on the public behalf, for offences against the law of nations.¹

¹ To this Jefferson has added a note at a later period:

“On further examination it does appear that the 11th section of the judiciary act above cited gives to the circuit courts exclusively, cognizance of all crimes and offences cognizable under the authority of the United States, and not otherwise provided for. This removes the difficulty, however, but one step further;—for questions then arise, 1st. What is the peculiar character of the offence in question; to wit, treason, felony, misdemeanor, or trespass? 2d. What is its specific punishment—capital or what? 3d. Whence is the venue to come?”